

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

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COMMENTS OF
COMMUNICATIONS TELESYSTEMS INTERNATIONAL

I. INTRODUCTION

Communications Telesystems International ("CTS")^{1/}, by its undersigned counsel, hereby submits its comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking in the above captioned docket. CTS welcomes the opportunity to participate in this proceeding and recognizes that it is of the utmost importance to clarify the requirements of Primary Interexchange Carrier ("PIC") change rules. Long distance providers must ensure that their communications with customers are clear and unambiguous.

At the same time, CTS urges the Commission to recognize that several of the proposed revisions to the PIC change rules will have a critical effect on the manner in which Interexchange Carriers ("IXCs") are able to market their services. If innovative and informative marketing practices are inhibited by overly formalistic rules, competition in the long distance market will be unnecessarily impeded. In prior proceedings, the Commission has sought to facilitate the IXCs' marketing efforts while maintaining the protection

^{1/} CTS and its affiliates are resellers of interstate and intrastate telecommunications services. CTS is an interexchange carrier corporation organized under the laws of the state of California.

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embodied in PIC change rules.^{2/} CTS encourages the Commission to continue to strive for this critical balance in the current Rulemaking.

CTS strongly supports rules which enhance clarity and discourage ambiguity without unnecessary formality that would lead to the restriction of the IXC's ability to market their service. CTS therefore supports Section 64.1150(d) of the proposed rules which outlines the type of information that should be contained in a Letter of Agency ("LOA"). CTS also supports the prohibition of "negative option" LOAs, as required by Section 64.1150(e). However, as is discussed below, CTS believes that the remaining proposed rules should be clarified or amended to reflect that: (1) LOAs should not have to be a completely separate document; and (2) the combination of LOAs with other inducements or advertisements remain as permissible forms of marketing. Additionally, the Commission should clarify that it has preempted inconsistent state PIC change rules.

II. THE PROPOSED RULES ARE UNDULY FORMALISTIC, WILL UNNECESSARILY AND UNINTENTIONALLY RESTRICT INNOVATIVE IXC MARKETING PRACTICES, AND ARE CONTRARY TO LONGSTANDING PUBLIC POLICY PRINCIPLES SUPPORTING FLEXIBILITY IN MARKETING SERVICES

As stated above, the Commission has adopted a policy of prescribing the content, but not the precise form, of LOAs in order to allow IXC flexibility in their business operations while meeting the Commission's goals of protecting consumers against unauthorized PIC

^{2/} In *Illinois Citizens Utility Board Petition for Rulemaking, Memorandum Opinion and Order*, 2 FCC Rcd 1726 (Com.Car.Bur. 1987), the Commission states that its intent was to "clearly facilitate the ICs' marketing efforts while maintaining the protection embodied in the letter of agency requirement" when discussing a prior proceeding, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 911 (1985).

changes.^{3/} In doing so, the Commission has crafted rules that meet is dual goals of encouraging competition and protecting the public. Sections 64.1150(d) [necessary information to be included in LOAs] and 64.1150(e) [negative option prohibition] will conform with these principles. However, other sections of the proposed rules have the effect of restricting a wide variety of legitimate IXC marketing behavior in their efforts to eliminate limited numbers of deceptive practices. Rather than proceeding in an overly formalistic fashion, the Commission should craft its rules carefully to target specific types of customer harm without impacting on the competitive nature of the industry.

For instance, Section 64.1150(b) [requiring that an LOA be in a separate document] and Section 64.1150(c) [requiring that a LOA not be combined with an inducement of any type] are burdensome on the IXC industry. Such prohibitions are vague^{4/} and contrary to the public interest principles underlying the Commission's IXC competition policy. Section 64.1150(b) would dramatically limit the ability of an IXC to provide needed information on the same form as a LOA. Such information would have to be contained on a separate form, complicating the PIC change procedure with addition volumes of paper and raising marketing costs, which IXCs would likely be forced to pass on to their customers. Section 64.1150(c) would have a similar effect. Carriers would be unable to offer customers promotions or inducements on the LOA, thereby eliminating many effective and legitimate marketing practices. Such marketing practices are a fundamental form of competitive practice. The

^{3/} *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, Report and Order 7 FCC Rcd 1039, 1049 (1992).

^{4/} For instance, it is not clear what constitutes a "separate document" or a "separate entity"

proposal should not be adopted because it would hinder a customers ability to change carriers.^{5/} Clearly, these rules will have a dramatic and negative impact on competition in the IXC industry should not be implemented in their present form.

Additionally, these rules are repetitive - the Commission has already mandated that each LOA must contain specific information in a clear, unambiguous form in Section 64.1150(d). If this section is properly enforced, the Commission's purpose in protecting customers will be well-served without relying on the overly formalistic and burdensome rules of Sections 64.1150(b) and (c). These sections are merely complements to Section 64.1150(d). The Commission instead should amend them to prohibit the inclusion of only deceptive or misleading inducements on the same form as a LOA. The Commission should then clearly define the parameters of these terms. Taken together with a properly enforced Section 64.1150(d), these rules will be sufficient to protect the public interest.

III. THE COMMISSION SHOULD PREEMPT INCONSISTENT STATE REGULATION OF PIC CHANGES

CTS urges the Commission to affirm that its LOA rules are the single, nation-wide industry standard for the form and content of LOAs. Clearly, the LOA is a single document, and carrier selection is performed on a unified basis. The Commission should make clear that its regulations are the sole requirement for carriers providing mixed jurisdictional service, and that it will preempt any inconsistent state regulation of PIC changes. FCC

^{5/} The was inducement created as a means to defray the costs associated with changing carriers thereby encouraging customers to do so. Inducements are still widely used for this purpose. Complicating this procedure is an unnecessary impediment to competition.

preemption is consistent with applicable law^{6/} and in the public interest, because adoption of national standard would limit potential confusion, delay and expense. Allowing the states to develop a patchwork of conflicting regulatory requirements that would force consumers and IXCs to separate their PIC requests on a jurisdictional basis is unreasonable and highly inefficient. Such a development would run contrary to the Commission's mandated goal of providing rapid and efficient telecommunications services at reasonable prices.^{7/}

IV. THE COMMISSION SHOULD NOT IMPOSE ANY ADDITIONAL FORMALISTIC REQUIREMENTS ON LOAs

The Commission has requested comment on several additional requirements that may be instituted for further regulation of LOAs. As stated, CTS believes that the Commission should avoid any unnecessary impediments to competition in the IXC market, especially if they offer no additional protection to consumers. The Commission proposes that rules be created to govern the point size, text, and title of LOAs. Such a regulation is not necessary for a competitive market. Once again, the Commission is attempting to create an increasingly inflexible regulatory structure that serves no additional public policy purpose.

^{6/} See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986) where the Supreme Court distinguished cases which are separable on a jurisdictional basis, such as depreciation methodologies for ratemaking, from cases where the courts found that it was not possible to separate interstate and intrastate components, as in the case of telephone instruments, *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976), and *North Carolina Utilities Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied* 434 U.S. 874 (1977).

^{7/} Case law supports the Commission's finding that requiring customers to retain two redundant facilities or to invest additional equipment frustrates the Commission's responsibilities to assure "rapid, efficient, nationwide and worldwide wire and radio communications service with adequate facilities at reasonable charges." *California v. FCC*, 567 F.2d 84, 85 (1987)

In light of the content, clarity and legibility requirements of Section 64.1150(d), such a regulation would be pointless.

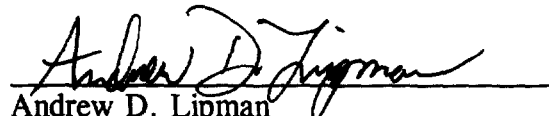
CTS also urges the Commission to avoid the creation of a bifurcated regulatory structure for business and residential customers. As long as the LOA meets Section 64.1150(d) standards, it should not be subject to different rules based on the type of service provided. Such a requirement would impose additional marketing costs on the IXC's and raise prices for consumers. In addition, there are instances in which a carrier cannot distinguish between business and residential lines. The Commission has not demonstrated a reasonable basis for treating business customers differently, and thus should not establish separate and possibly confusing requirements for business and residential customers. The anticompetitive effects of the proposed regulation outweigh any potential public policy benefit (which remains unidentified) such a rule could yield.

Finally, the Commission also has requested comment on whether LOAs should contain only the name of the carrier that is actually providing the IXC service. Adopting such a rule would only impose another restraint on the ability of the IXC's to market their service. If clarity is best served by identifying an underlying carrier, then carrier should be permitted to provide that information on the LOA. All of these issues highlight the problems associated with the Commission's efforts to prescribe precisely what information is contained within a LOA. The Commission should determine instead only the minimum information required for the LOA to meet public policy concerns. Each IXC should then be allowed to determine the format and the extent of the information to be contained in each particular LOA.

V. CONCLUSION

CTS strongly supports the Commission's efforts to encourage clear and unambiguous communication between long distance carriers and their customers. CTS is concerned, however, that the Commission's proposed rules are too broad and will have the unintended effect of disrupting legitimate IXC marketing flexibility. CTS therefore recommends that the Commission revise its proposed rules, retaining only Section 64.1150(d), requiring clear and unambiguous LOAs, and Section 64.1150(e), prohibiting "negative option" LOAs. If the Commission decides to retain Section 64.1150(c), it should add the word "deceptive" before "inducements," and thereby prohibit only deceptive inducements on the same document as the LOA. Finally, the Commission should preempt inconsistent state regulation. With these changes, the Commission will be able to achieve its public policy goals while at the same time encouraging a competitive IXC industry.

Respectfully Submitted


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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 1995,
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